

Senate Resolution No. 43

Introduced by Senators Steinberg and De León

Relative to the Standing Rules of the Senate for the 2013–14 Regular Session

Resolved by the Senate of the State of California, That the Standing Rules of the Senate for the 2013–14 Regular Session are amended as follows:

First—That Rule 12.3 is amended to read:

Committee on Legislative Ethics

12.3. (a) (1) The Committee on Legislative Ethics is hereby created. The committee shall be appointed by the Committee on Rules and shall consist of six Senators, at least two of whom are members of the political party having the greatest number of members in the Senate and at least two of whom are members of the political party having the second greatest number of members in the Senate. The members of the committee shall serve two-year terms. The President pro Tempore and the Minority Floor Leader shall serve as ex officio, nonvoting members of the committee. A member of the Committee on Rules shall not be appointed to the committee.

(2) The Committee on Rules shall select a Chair and a Vice Chair, who may not be members of the same political party. The Chair may not serve more than two consecutive two-year terms, and the Committee on Rules shall select a successor who is not a member of the same political party as the immediately previous Chair.

(3) Vacancies in the committee shall be filled within 30 days by the Committee on Rules for the remainder of a term.

(4) If a complaint is filed against a member of the committee, the Committee on Rules shall temporarily replace the member with a Senator of the same political party, who shall serve until the complaint is dismissed by the committee or the Senate takes action as it deems appropriate, whichever occurs earlier.

(5) The Committee on Rules, upon the recommendation of the Committee on Legislative Ethics, may retain or appoint a Chief Counsel to assist the committee in carrying out its functions. The staff of the committee shall be considered permanent and professional, and shall perform their duties in a nonpartisan manner. Neither staff of the committee, nor persons currently contracted to provide services for the committee, shall engage in partisan activities regarding a Senate or Assembly election campaign.

(6) (A) The Committee on Rules, upon the recommendation of the Committee on Legislative Ethics, shall appoint an ethics ombudsperson to facilitate the receipt of information about potential ethical violations, and to assist the Senate in providing remedies for retaliatory conduct, to ensure that an informant or complainant does not suffer adverse consequences with respect to his or her employment in violation of paragraph (1) of subdivision (u). Remedies for retaliatory conduct pursuant to this rule may include back pay and reinstatement.

(B) The ombudsperson shall be accessible to Senators, officers and employees of the Senate, and members of the public who wish to provide information or seek guidance about ethical standards or possible violations before filing a formal complaint pursuant to subdivision (c). All communications made pursuant to this subparagraph shall be confidential between the informant or complainant and the ombudsperson. In appropriate cases, especially where repeated or systematic violations appear to have occurred, the ombudsperson may refer the information to the Chair of the Committee on Rules, the Chair of the Committee on Legislative Ethics, the Secretary of the Senate, or all three; however, the identity of the informant or complainant shall be kept confidential unless that person otherwise consents.

(C) The Committee on Legislative Ethics shall maintain a public hotline telephone number for purposes of contacting the ombudsperson. Complaints received through the hotline shall be considered informal complaints, and the nature and existence of the complaints shall be kept confidential.

(b) The committee shall do all of the following:

(1) The committee shall formulate and recommend, for adoption by the Senate, standards of conduct for Senators and officers and employees of the Senate in the performance of their legislative responsibilities. The Ethics Manual for Members, Officers, and Employees of the United States House of Representatives, as prepared by the Staff of the Committee on Standards of Official Conduct, 102nd Congress Second

Session (United States Government Printing Office, Washington, 1992), the Code of Ethics (Article 2 (commencing with Section 8920) of Chapter 1 of Part 1 of Division 2 of Title 2 of the Government Code), and Joint Rule 44 shall serve as guides in the formulation of the standards of conduct.

(2) At the request of any Senator or officer or employee of the Senate, the committee shall provide an advisory opinion with respect to the standards of conduct of the Senate on the general propriety of past, current, or anticipated conduct of that Senator, officer, or employee. The opinion shall be rendered within 21 days unless the Chair and Vice Chair agree otherwise. The committee may, with appropriate deletions to ensure the privacy of the individuals concerned, publish the advisory opinions for the guidance of other Senators, officers, or employees.

(3) The committee shall develop, issue, and annually update a clear, informative, and usable manual for the Senate based on the standards of conduct adopted by the Senate, including any advisory opinions published pursuant to paragraph (2).

(4) The committee shall conduct periodic workshops, at least once each calendar year, for Senators and officers and employees of the Senate, including workshops specifically designed for newly elected Senators and newly appointed officers and employees. At least once in each biennial session, each Senator, and each officer or employee of the Senate shall attend one of these workshops. The workshops shall include, but not be limited to, a comprehensive review of all applicable statutes and Senate rules. At least once in each biennial session, each Senator shall also attend an individual training or review session conducted by the ombudsperson.

(5) After adoption by the Senate of the standards of conduct, the committee shall receive and review complaints alleging violations of the standards of conduct by Senators, or officers or employees of the Senate, in accordance with the procedures specified in this rule.

(6) The committee shall maintain a record of its investigations, hearings, and other proceedings. All information, testimony, records, complaints, documents, and reports filed with, submitted to, or made by the committee, and all records and transcripts of any investigations or hearings of the committee, shall be confidential and shall not be open to inspection by any person other than a member of the committee, the staff of the committee, or any person engaged by contract or otherwise to perform services for the committee, except as otherwise specifically provided for in this rule. Any member of the committee or any person

on the staff of the committee who, during the person's tenure with the committee or anytime thereafter, and without authorization, discloses, by writing, verbal communication, or conduct, or reveals in any way, in whole, in part, or by way of summary, any information, testimony, record, complaint, document, report, or transcript that is confidential shall be subject to discipline. In the case of a contract for the performance of services for the committee, the contract shall expressly prohibit any party to the contract from, without authorization, disclosing, by writing, verbal communication, or conduct, or from revealing in any way, in whole, in part, or by way of summary, any information, testimony, record, complaint, document, report, or transcript that is confidential. The committee may, by a majority vote of the membership of the committee, authorize the release of any records, complaints, documents, reports, and transcripts in its possession to the appropriate enforcement agency if the committee determines that there is probable cause to believe that the violation or violations alleged in the complaint would constitute a felony or if the committee determines that the information is material to any matter pending before the enforcement agency.

(c) (1) Any person may file a formal complaint with the committee that alleges a violation of the standards of conduct. A formal complaint does not include information provided to the ombudsperson pursuant to paragraph (6) of subdivision (a), unless the person who contacted the ombudsperson elects to file a complaint that complies with this subdivision and subdivision (d).

(2) Except as provided in paragraphs (3) and (4), a complaint shall not be filed more than 18 months after the date that the alleged violation occurred.

(3) If the committee determines that the person filing the complaint did not know, or through the exercise of reasonable diligence could not have known, of the alleged violation within 18 months after the date that the alleged violation occurred, the complaint may be filed within three years after the date that the alleged violation occurred.

(4) If a complaint is filed within 60 days prior to an election at which a Senator or officer or employee is a candidate for elective office, the complaint shall be returned to the person filing the complaint, and the person shall be informed that the complaint may be filed with an appropriate enforcement agency and may be refiled with the committee after the election. The period of time for filing the complaint shall be extended for 60 days.

(5) A complaint shall not be filed if it alleges a violation that occurred prior to the adoption of the standards of conduct.

(d) A formal complaint shall satisfy all of the following requirements:

(1) It shall be in writing.

(2) It shall state the name and contact information of the person filing the complaint.

(3) It shall state the name of Senator, or the name and position or title of the officer or employee of the Senate, who is alleged to have committed a violation of the standards of conduct.

(4) It shall set forth allegations that, if true, would constitute a violation of the standards of conduct. The allegations shall be stated with sufficient clarity and detail to enable the committee to make a finding pursuant to subdivision (h).

(5) It shall state the date of the alleged violation.

(6) It shall include a statement that the allegations are true of the person's own knowledge or that the person believes them to be true, and may include documents in the possession of the party filing the complaint relevant to, or supportive of, his or her allegations.

(e) The committee, on its own motion, two-thirds of the membership concurring, may initiate a proceeding by filing a complaint that complies with paragraphs (1) to (5), inclusive, of subdivision (d).

(f) The committee shall promptly send a copy of a complaint to the Senator, or officer or employee of the Senate, alleged to have committed the violation, who shall thereafter be designated as the respondent.

(g) If a complaint is filed by a person other than the committee, the Chair and Vice Chair of the committee shall examine the complaint to determine whether it was filed in accordance with this rule and any rules of the committee.

(h) Within seven days after the complaint is filed, the Chair and Vice Chair shall provide to the committee a copy of the complaint and their opinion as to whether the allegations in the complaint, if true, would constitute a violation of the standards of conduct. If the committee, by a two-thirds vote of its membership, finds that the allegations, if true, would constitute a violation of the standards of conduct, the committee shall hold a hearing within 30 days to conduct a preliminary inquiry. If two-thirds of the membership of the committee fails to find that the allegations, if true, would constitute a violation of the standards of conduct, it shall dismiss the complaint and so notify the person who filed the complaint and the respondent, and the complaint shall not be made public.

(i) At the preliminary inquiry, the respondent may respond to the allegations in the complaint by written statement or oral testimony. If two-thirds of the membership of the committee finds that probable cause exists for believing that the respondent committed a violation of the standards of conduct, the committee shall issue a count-by-count statement of alleged violations. If two-thirds of the membership of the committee fails to find that probable cause exists, the committee shall dismiss the complaint. In either event, the committee shall immediately notify the respondent and the person who filed the complaint of its action. If the committee finds that probable cause exists, the statement of alleged violations shall be made public within seven days.

(j) Within 21 days after the issuance of the statement of alleged violations, the respondent may file an answer that admits or denies each count. Upon request of the respondent, the committee may grant the respondent an additional 21 days to respond.

(k) Within 60 days after the issuance of the statement of alleged violations, the committee shall hold a disciplinary hearing. If a majority of the membership of each party on the committee fails to find that the respondent committed a violation of the standards of conduct, the committee shall dismiss the complaint. If a majority of the membership of each party on the committee finds by clear and convincing evidence that the respondent committed a violation of the standards of conduct, the committee shall take the following action:

(1) If the respondent is a Senator, it shall hold a hearing to determine an appropriate sanction.

(2) If the respondent is an officer or employee, it shall transmit its findings to the Committee on Rules for appropriate action.

(l) (1) At the hearing to determine an appropriate sanction, two-thirds of the membership of the committee shall determine whether the violation is serious or minor.

(2) If the committee determines that a violation is minor or fails to determine that a violation is serious, two-thirds of the membership of the committee (A) shall, if it determines that the violation bears upon the exercise of a right or privilege, recommend that the Committee on Rules deny or limit that right or privilege and shall transmit its findings and recommendation to the Committee on Rules, or (B) shall impose any lesser sanction, including, but not limited to, issuing a private letter of admonishment for an inadvertent, technical, or otherwise de minimis violation, which shall not be considered discipline. Within 15 days after

the imposition of a lesser sanction, the respondent may appeal the sanction imposed to the Committee on Rules.

(3) If the committee determines that a violation is serious, two-thirds of the membership of the committee shall recommend that the Senate take one or more of the following actions and shall transmit its findings and recommendation to the Senate:

(A) The denial or limitation of any right or privilege, if the violation bears upon the exercise of that right or privilege.

(B) A reprimand for a serious violation.

(C) A censure for a more serious violation.

(D) A suspension or expulsion for a most serious violation.

(m) The Senate shall, within 15 legislative days after receiving the findings and recommendation, vote on the recommendation of the committee. The Senate, by 21 votes, may deny or limit any right or privilege of, reprimand, or censure the Senator or, by 27 votes, may expel the Senator.

(n) The committee or Senate may defer any action required by this rule if other proceedings have been commenced on the same matter.

(o) (1) At all hearings, the Chief Counsel of the committee shall present the case. All relevant and probative evidence shall be admissible unless it is privileged. Witnesses may be called and cross-examined by the committee and the respondent, and exhibits and other documents may be entered into the record. The respondent shall have the right to be represented by legal counsel or any other person of his or her choosing.

(2) If the committee receives, at any time, any exculpatory information relating to the alleged violation, the committee shall make the information available to the respondent. The committee and the respondent shall comply with requests for discovery consistent with Sections 1054, 1054.1, and 1054.3 of the Penal Code.

(p) If the committee determines that the complaint was filed with malicious intent, it may request that the Committee on Rules reimburse the expenses incurred by the respondent.

(q) At any time during the proceedings, the respondent may admit that he or she committed a violation of the standards of conduct. If the respondent admits some but not all of the violations alleged in the complaint or the counts set forth in the statement of alleged violations, the committee shall find that the admitted violations constituted a violation of the standards of conduct and may continue the proceedings to determine whether the other alleged violations constituted violations

of the standards of conduct. If the respondent admits to all alleged violations, the committee shall find that the admitted violations constituted a violation of the standards of conduct, terminate the preliminary inquiry or disciplinary hearing, and take the action required by paragraph (1) or (2) of subdivision (k).

(r) Meetings of the committee shall not be open to the public until the committee finds that probable cause exists for believing that the respondent committed a violation of the standards of conduct. Subsequent meetings of the committee or Senate shall be public, and notice of any meeting shall be published in the Senate File for four calendar days prior to the meeting.

(s) If the committee finds that probable cause exists for believing that the respondent committed a violation of the standards of conduct, the transcript of any testimony given, or any documents admitted into evidence, at a public hearing and any report prepared by the committee subsequent to that finding that states a final finding or recommendation shall be open to public inspection.

(t) Upon request of the respondent, the committee may permit the respondent to inspect, copy, or photograph books, papers, documents, photographs, or other tangible objects that relate to the allegations in the complaint. If the committee finds that probable cause exists for believing that the respondent committed a violation of the standards of conduct, the committee shall permit the respondent to inspect, copy, or photograph books, papers, documents, photographs, or other tangible objects that relate to the statement of alleged violations.

(u) (1) A Senator or officer or employee of the Senate shall not directly or indirectly use or attempt to use his or her official authority or influence to intimidate, threaten, coerce, command, or attempt to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to file a complaint with the committee, testify before, or in any way cooperate with, the committee or any panel.

(2) For the purpose of paragraph (1), “use of official authority or influence” includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(3) Nothing in this subdivision shall be construed to authorize any person to disclose information the disclosure of which is otherwise prohibited by law.

(v) The committee may adopt rules governing its proceedings not inconsistent with this rule. The provisions of Joint Rule 36 relating to investigating committees apply to the committee to the extent those provisions are consistent with this rule.

(w) The powers and procedures set forth in subdivisions (b) to (v), inclusive, confer independent authority and shall not be limited or altered by Joint Rule 45.

(x) Where confidentiality is required pursuant to this rule, confidentiality shall be maintained only to the extent that disclosure of the confidential information is not otherwise required by law.

Second—That Rule 13 is amended to read:

Committee on Rules

13. (a) The Committee on Rules is charged with the general responsibility for the administrative functioning of the Senate. The committee has general charge of the books, documents, and other papers and property of the Senate and shall see that the same are properly kept, cared for, filed, or otherwise disposed of in accordance with applicable law and rules. The committee also has the duties of making studies and recommendations designed to promote, improve, and expedite the business and procedure of the Senate and its committees, including investigating committees consisting wholly or in part of Members of the Senate, and of proposing any amendments to the rules deemed necessary to accomplish those purposes.

(b) The Committee on Rules shall continue in existence during any recess of the Legislature until the convening of the next regular session, and shall have the same powers and duties as while the Senate is in session. The committee has the authority to fill vacancies in any Senate committee or in the Senate membership of any joint committee.

(c) The committee and its members shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to the Committee on Rules and its members.

(d) The committee may make available to any Senate or joint committee, or any Member of the Senate, assistance in connection with the duties of the committee or other legislative matters as the personnel resources under the direction of the committee or its other facilities permit.

(e) (1) All employees on the payroll of the Senate are employees of the Senate and not of individual members, and they are under the direct control of the Committee on Rules. The Committee on Rules has general supervision over all employees of the Senate and the powers and duties to suspend, discipline, or discharge any employees when necessary. Any insubordination or inefficiency on the part of any employee shall be reported to the Committee on Rules.

(2) A Senator or officer or employee of the Senate shall not retaliate against an employee of the Senate for reporting information to the Senate Committee on Rules, the Senate Committee on Legislative Ethics, or any government or law enforcement agency regarding a possible violation of the Senate Standards of Conduct or any state or federal law or regulation, or because the Senator, officer, or employee believes that the employee reported or may report such information, if the employee who reported the information reasonably believed that the information disclosed a violation of the Senate Standards of Conduct or any state or federal law or regulation.

(f) The committee shall make available and furnish to the Members of the Senate, and the Senate committees, personnel resources as may be reasonably necessary for the Members and the committees to carry out their duties.

(g) The Committee on Rules constitutes the Committee on Introduction of Bills and has charge of the engrossment and enrollment of bills, the contingent expenses of the Senate, and legislative printing, except insofar as these functions are delegated to the Secretary of the Senate.

(h) The rooms, passages, and buildings set apart for the use of the Senate are under the direction of the Committee on Rules, and the committee may assign the press desks in the Senate Chamber to accredited newspaper representatives.

(i) Executive communication of nominations sent by the Governor, or any other entity with the authority to make appointments, to the Senate for confirmation shall be referred to the Committee on Rules, unless otherwise ordered by the Senate, without debate.

(j) The Committee on Rules shall, at each regular session, appoint a Member of the Senate to serve on the Judicial Council and has the authority during any joint recess to fill any vacancy in that position that occurs during the recess.

(k) When a report of a joint legislative committee is delivered to the Senate Desk, the Committee on Rules shall refer it to a standing committee for review and appropriate action.

Senate Resolution No. 43 read and adopted by the Senate June 9, 2014.

Attest: _____
Secretary of the Senate